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FILED

MAY 23 2013

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

EDL

Bobbi Lopez,

Plaintiff,

vs.

Performant Recovery, Inc., and DOES 1-
10, inclusive,

Defendants.

CV 13 2357
Case No.:

COMPLAINT FOR DAMAGES

**1. VIOLATION OF FAIR DEBT
COLLECTION PRACTICES ACT,
15 U.S.C. § 1692 ET. SEQ;
2. VIOLATION OF FAIR DEBT
COLLECTION PRACTICES ACT,
CAL.CIV.CODE § 1788 ET. SEQ.**

JURY TRIAL DEMANDED

For this Complaint, the Plaintiff, BOBBI LOPEZ, by undersigned counsel,
states as follows:

I. INTRODUCTION

1. This is an action for actual and statutory damages brought by Plaintiff,
Bobbi Lopez, an individual consumer, against Defendant, Performant Recovery,
Inc., for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et*

1 *seq.* (hereinafter “FDCPA”), which prohibits debt collectors from engaging in
2 abusive, deceptive, and unfair practices.
3

4 ***II. JURISDICTION***

5 2. Jurisdiction of this court arises under 15 U.S.C. § 1692k(d) and 28
6 U.S.C. § 1337. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and
7 2202. Venue in this District is proper in that the Defendant transacts business here.
8

9 ***III. PARTIES***

10 3. Plaintiff, Bobbi Lopez, is a natural person with a permanent residence
11 in Tucson, Pima County, Arizona 85715.
12

13 4. Upon information and belief, the Defendant, Performant Recovery,
14 Inc., is a corporation engaged in the business of collecting debt in this state and in
15 several other states, with its principal place of business located at 333 North
16 Canyons Parkway, Suite 100, Livermore, Alameda County, California 94551. The
17 principal purpose of Defendant is the collection of debts in this state and several
18 other states, and Defendant regularly attempts to collect debts alleged to be due
19 another.
20

21 5. Defendant is engaged in the collection of debts from consumers using
22 the mail and telephone. Defendant regularly attempts to collect consumer debts
23 alleged to be due to another. Defendant is a “debt collector” as defined by the
24 FDCPA, 15 U.S.C. § 1692a(6).
25
26
27
28

1 11. Within one (1) year preceding the date of this Complaint and during
2 the first thirty (30) days of communicating with Plaintiff, Defendant, in connection
3 with the collection of the alleged debt, demanded payment on the alleged debt
4 without also informing Plaintiff that Plaintiff could dispute the validity of the
5 alleged debt and thereby overshadowed the Plaintiff's right to dispute the validity
6 of the debt.
7

8
9 12. The natural consequences of Defendant's statements and actions were
10 to unjustly condemn and vilify Plaintiff for his non-payment of the debt he
11 allegedly owed.
12

13 13. The natural consequences of Defendant's statements and actions were
14 to produce an unpleasant and/or hostile situation between Defendant and Plaintiff.
15

16 14. The natural consequences of Defendant's statements and actions were
17 to cause Plaintiff mental distress.
18

19 15. Defendant utilized unfair and unconscionable means to collect on
20 Plaintiff's alleged debt, by lying to and misleading Plaintiff.
21

22 **V. CLAIM FOR RELIEF**

23 16. Plaintiff repeats and realleges and incorporates by reference to the
24 foregoing paragraphs.

25 17. Defendants violated the FDCPA. Defendants' violations include, but
26 are not limited to, the following:
27
28

1 (a) Defendant violated §1692d of the FDCPA by engaging in conduct
2 the natural consequences of which is to harass, oppress, or abuse
3 any person in connection with the collection of an alleged debt;
4 and

5 1.

6 (b) Defendant violated §1692d(2) of the FDCPA by using obscene or
7 profane language or language the natural consequences of which is
8 to abuse the hear or reader in connection with the collection of an
9 alleged debt; and

10 (c) Defendant violated §1692e of the FDCPA by using a false,
11 deceptive, or misleading representation or means in connection
12 with the collection of the alleged debt; and

13 (d) Defendant violated §1692e(5) of the FDCPA by threatening to take
14 action that the Defendant does not intend to take and/or the
15 Defendant cannot legally take; and

16 (e) Defendant violated §1692e(10) of the FDCPA by using false
17 representation or deceptive means in connection with the collection
18 the alleged debt; and

19 (f) Defendant violated §1692f of the FDCPA by using unfair or
20 unconscionable means in connection with the collection of an
21 alleged debt; and

22 (g) Defendant violated §1692g(b) of the FDCPA by overshadowing or
23 being inconsistent with the disclosure of the consumer's rights to
24 dispute the debt or request the name and address of the original
25 creditor.

26 18. Defendant's acts as described above were done intentionally with the
27 purpose of coercing Plaintiff to pay the alleged debt.
28

1 19. As a result of the foregoing violations of the FDCPA, Defendant is
2 liable to the Plaintiff, Bobbi Lopez, for declaratory judgment that Defendant's
3 conduct violated the FDCPA, actual damages, statutory damages, and costs and
4 attorney fees.
5

6 **WHEREFORE**, Plaintiff respectfully requests that judgment be entered
7 against Defendant, Performant Recovery, Inc., for the following:
8

- 9 A. Declaratory judgment that Defendant's conduct violated the FDCPA.
10 B. Actual damages.
11 C. Statutory damages pursuant to 15 U.S.C. § 1692k.
12 D. Costs and reasonable attorney fees pursuant to 15 U.S.C. § 1692k.
13 E. Awarding Plaintiff any pre-judgment and post-judgment interest as may
14 be allowed under the law.
15 F. For such other and further relief as the Court may deem just and proper.
16
17

18 **VI. DEMAND FOR JURY TRIAL**

19 PLEASE TAKE NOTICE that Plaintiff, Bobbi Lopez, demands trial by jury
20 in this action.
21

22 DATED: May 20, 2013

LARA SHAPIRO

23
24 By: 
25 Lara R. Shapiro

26 Attorney for Plaintiff
27 Bobbi Lopez
28